

AMENDED IN ASSEMBLY JULY 18, 2007

AMENDED IN ASSEMBLY JULY 5, 2007

AMENDED IN SENATE JUNE 4, 2007

AMENDED IN SENATE MAY 1, 2007

AMENDED IN SENATE APRIL 18, 2007

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL**No. 729**

Introduced by Senator Padilla

February 23, 2007

An act to amend Sections 11703 and 11705 of, to add ~~Sections 4456.3~~ *Section 4456.3* to, and to add Chapter 11 (commencing with Section 12200) to Division 5 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 729, as amended, Padilla. Vehicles: dealers: consumer protection.

(1) Existing law imposes licensing and regulatory requirements on vehicle dealers. A violation of those requirements is a crime.

This bill would create the Consumer Motor Vehicle Recovery Corporation ("recovery corporation"), with a board of directors with certain powers and duties, in order to provide payments to consumers on eligible claims, including, but not limited to, a vehicle dealer or lessor-retailer's failure to remit license or registration fees or failure to pay proceeds of a consignment sale, subject to certain requirements and limitations. On and after July 1, 2008, the Department of Motor Vehicles would be required to charge dealers or lessor-retailers a fee, as prescribed, for each vehicle sold by the dealers or lessor-retailers. Those

fees, upon appropriation, would be paid to the recovery corporation in order to fund its operations and pay eligible consumer claims.

A violation of these requirements would be a crime. In addition, a violation of a requirement to submit certain applications under penalty of perjury would be a crime. Because this bill would create new crimes, the bill would create a state-mandated local program.

The operation of the recovery corporation would be subject to examination and review by the Attorney General and his or her representatives, who would have the authority to determine that the recovery corporation has failed or ceased to operate, under specified circumstances. The bill would require that if the recovery corporation is dissolved or ceases to exist, or if the Attorney General or his or her representative determines, as prescribed, that the recovery corporation has failed or ceased to operate, all outstanding debts, obligations of the recovery corporation, and amounts due for services rendered would first be paid from the remaining assets, including the recovery fund. The assets remaining, after settling those liabilities, would be distributed to the participants, less the costs of that distribution.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares that the
- 2 sale of motor vehicles has a substantial effect on the economic
- 3 well-being of the state and its citizens, and that the maintenance
- 4 of integrity and fair business practices in vehicle sales and lease
- 5 transactions is vitally important to the state.
- 6 (b) The Legislature further finds and declares that consumers
- 7 have suffered economic loss as the result of the conduct of some
- 8 motor vehicle dealers or lessor-retailers who have failed to remit
- 9 amounts paid by consumers for license and registration fees, failed
- 10 to pay the proceeds of consignment sales to consumer consignors,
- 11 ~~and failed to discharge the obligations secured by liens on motor~~
- 12 ~~vehicles, or the obligations remaining on leases of motor vehicles,~~

1 *vehicles* that are traded in in connection with the purchase of motor
2 vehicles from the dealers or lessor-retailers, *or failed to pay the*
3 *amounts that the dealers or lessor-retailers agreed with consumers*
4 *to pay to the lessors of motor vehicles that the consumers*
5 *transferred as a trade-in to the dealers or lessor-retailers.* The
6 consumers who have been harmed often do not have adequate
7 resources to pursue their claims against the dealers or
8 lessor-retailers, and some of the dealers or lessor-retailers are
9 insolvent and cannot satisfy legitimate claims. The resulting erosion
10 of public confidence in motor vehicle sellers has deleterious
11 economic consequences for reputable dealers and lessor-retailers.

12 (c) It is the intent and purpose of this act to instill and maintain
13 public confidence in the vehicle trade-in and consignment sale
14 processes by establishing a recovery fund with adequate resources
15 based on reasonable assessments for each report-of-sale to
16 compensate and safeguard members of the public who have
17 suffered monetary loss as the result of any of the acts described in
18 subdivision (b) and who are unable to have those claims satisfied
19 because of a dealership closure or insolvency.

20 SEC. 2. Section 4456.3 is added to the Vehicle Code, to read:

21 4456.3. (a) The department shall charge a dealer or
22 lessor-retailer a fee at the time the application for registration is
23 submitted, as established by the director pursuant to subdivision
24 (b), for each vehicle sold by a dealer or lessor-retailer and reported
25 on a report-of-sale form issued by the department to a dealer or
26 lessor-retailer, or for every vehicle sold by a dealer or lessor-retailer
27 if that licensee does not use a report-of-sale form issued by the
28 department because the report of the sale is given electronically
29 or otherwise. The department shall collect the fee, and upon
30 appropriation, the fees shall be paid to the Consumer Motor Vehicle
31 Recovery Corporation as described in Chapter 11 (commencing
32 with Section 12200) of Division 5.

33 (b) The director shall establish the fee at one dollar (\$1) and
34 shall collect and, upon appropriation, transmit that fee to the
35 Consumer Motor Vehicle Recovery Corporation until the
36 Consumer Motor Vehicle Recovery Corporation notifies the
37 department that the balance in the recovery fund maintained by
38 the corporation has reached five million dollars (\$5,000,000).
39 Within 90 days after being notified by the Consumer Motor Vehicle
40 Recovery Corporation, the director shall cease collecting the fee.

1 Thereafter, if the amount in the recovery fund maintained by the
2 corporation is less than two million dollars (\$2,000,000), the
3 Consumer Motor Vehicle Recovery Corporation shall notify the
4 department of the amount necessary to return the recovery fund
5 balance to five million dollars (\$5,000,000). Within 90 days of
6 being notified, the director shall collect the fee until the Consumer
7 Motor Vehicle Recovery Corporation notifies the director that the
8 recovery fund has reached five million dollars (\$5,000,000). Within
9 90 days of being notified, the director shall cease collecting the
10 fee. These fees shall be transmitted to the corporation, upon
11 appropriation.

12 (c) (1) The Consumer Motor Vehicle Recovery Corporation
13 shall reimburse the department for all reasonable expenses incurred
14 in implementing this section.

15 (2) The Consumer Motor Vehicle Recovery Corporation shall
16 reimburse the department for all reasonable startup expenses
17 incurred by the department to comply with this section within 90
18 days after the department begins collecting the fees and
19 transmitting them to the Corporation as provided in this section.

20 (d) This section shall become operative on July 1, 2008.

21 SEC. 3. Section 11703 of the Vehicle Code is amended to read:
22 11703. The department may refuse to issue a license to a
23 manufacturer, manufacturer branch, remanufacturer,
24 remanufacturer branch, distributor, distributor branch, transporter,
25 or dealer, if it determines any of the following:

26 (a) The applicant was previously the holder, or a managerial
27 employee of the holder, of a license issued under this chapter which
28 was revoked for cause and never reissued by the department, or
29 which was suspended for cause and the terms of suspension have
30 not been fulfilled.

31 (b) The applicant was previously a business representative of a
32 business whose license issued under this chapter was revoked for
33 cause and never reissued or was suspended for cause and the terms
34 of suspension have not been fulfilled.

35 (c) If the applicant is a business, a business representative of
36 the business was previously the holder of a license, or was a
37 business representative of a business whose license, issued under
38 this chapter was revoked for cause and never reissued or was
39 suspended for cause and the terms of suspension have not been
40 fulfilled; or, by reason of the facts and circumstances related to

1 the organization, control, and management of the business, the
2 operation of that business will be directed, controlled, or managed
3 by individuals who, by reason of their conviction of violations of
4 the provisions of this code, would be ineligible for a license and,
5 by licensing the business, the purposes of this chapter would be
6 defeated.

7 (d) The applicant, or a business representative if the applicant
8 is a business, has been convicted of a crime or committed an act
9 or engaged in conduct involving moral turpitude which is
10 substantially related to the qualifications, functions, or duties of
11 the licensed activity. A conviction after a plea of nolo contendere
12 is a conviction within the meaning of this section.

13 (e) The applicant was previously the holder of an occupational
14 license issued by another state, authorizing the same or similar
15 activities of a license issued under this division; and that license
16 was revoked or suspended for cause and was never reissued, or
17 was suspended for cause, and the terms of suspension have not
18 been fulfilled.

19 (f) The information contained in the application is incorrect.

20 (g) Upon investigation, the business history required by Section
21 11704 contains incomplete or incorrect information, or reflects
22 substantial business irregularities.

23 (h) A decision of the department to cancel, suspend, or revoke
24 a license has been made and the applicant was a business
25 representative of the business regulated under that license.

26 (i) The applicant has failed to repay the full amount of a claim
27 paid by the Consumer Motor Vehicle Recovery Corporation, plus
28 interest at the rate of 10 percent per annum. The dealer or
29 lessor-retailer's discharge in bankruptcy shall not relieve the dealer
30 or lessor-retailer from the provisions of this subdivision, except
31 to the extent, if any, mandated by bankruptcy law.

32 SEC. 4. Section 11705 of the Vehicle Code is amended to read:

33 11705. (a) The department, after notice and hearing, may
34 suspend or revoke the license issued to a dealer, transporter,
35 manufacturer, manufacturer branch, remanufacturer,
36 remanufacturer branch, distributor, or distributor branch upon
37 determining that the person to whom the license was issued is not
38 lawfully entitled thereto, or has done any of the following:

39 (1) Filed an application for the license using a false or fictitious
40 name not registered with the proper authorities, or knowingly made

1 a false statement or knowingly concealed a material fact, in the
2 application for the license.

3 (2) Made, or knowingly or negligently permitted, an illegal use
4 of the special plates issued to the licensee.

5 (3) Used a false or fictitious name, knowingly made a false
6 statement, or knowingly concealed a material fact, in an application
7 for the registration of a vehicle, or otherwise committed a fraud
8 in the application.

9 (4) Failed to deliver to a transferee lawfully entitled thereto a
10 properly endorsed certificate of ownership.

11 (5) Knowingly purchased, sold, or otherwise acquired or
12 disposed of a stolen motor vehicle.

13 (6) Failed to provide and maintain a clear physical division
14 between the type of business licensed pursuant to this chapter and
15 any other type of business conducted at the established place of
16 business.

17 (7) Willfully violated Section 3064 or 3065 or any rule or
18 regulation adopted pursuant thereto.

19 (8) Violated any provision of Division 3 (commencing with
20 Section 4000) or any rule or regulation adopted pursuant thereto,
21 or subdivision (a) of Section 38200.

22 (9) Violated any provision of Division 4 (commencing with
23 Section 10500) or any rule or regulation adopted pursuant thereto.

24 (10) Violated any provision of Article 1 (commencing with
25 Section 11700) of Chapter 4 of Division 5 or any rule or regulation
26 adopted pursuant thereto.

27 (11) Violated any provision of Part 5 (commencing with Section
28 10701) of Division 2 of the Revenue and Taxation Code or any
29 rule or regulation adopted pursuant thereto.

30 (12) Violated any provision of Chapter 2b (commencing with
31 Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code
32 or any rule or regulation adopted pursuant thereto.

33 (13) Submitted a check, draft, or money order to the department
34 for any obligation or fee due the state which was dishonored or
35 refused payment upon presentation.

36 (14) Has caused any person to suffer any loss or damage by
37 reason of any fraud or deceit practiced on that person or fraudulent
38 representations made to that person in the course of the licensed
39 activity.

For purposes of this paragraph, “fraud” includes any act or omission which is included within the definition of either “actual fraud” or “constructive fraud” as defined in Sections 1572 and 1573 of the Civil Code, and “deceit” has the same meaning as defined in Section 1710 of the Civil Code. In addition, “fraud” and “deceit” include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, “person” also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated Section 43151, 43152, or 43153 of, or subdivision (b) of Section 44072.10 of, the Health and Safety Code.

(17) Failed to repay a claim paid by the Consumer Motor Vehicle Recovery Corporation as provided in subdivision (i) of Section 11703.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 5. Chapter 11 (commencing with Section 12200) is added to Division 5 of the Vehicle Code, to read:

CHAPTER 11. CONSUMER RECOVERY FUND

12200. The following definitions apply to this chapter:

(a) “Application” means an application to the recovery corporation for the payment of an eligible claim from the recovery fund that is filed with the recovery corporation after January 1, 2009.

1 (b) “Consumer” means a person who either (1) purchased or
2 leased, or became obligated to purchase or lease, a motor vehicle
3 to be used primarily for personal, family, or household purposes
4 from a dealer or lessor-retailer licensed under this code, or (2)
5 consigned for sale a motor vehicle that was used primarily for
6 personal, family, or household purposes to a dealer licensed under
7 this code.

8 (c) “Eligible claim” means an unsatisfied claim for economic
9 loss, not barred by the statutes of limitation, that accrues after July
10 1, 2008, as a result of the failure of a dealer licensed under this
11 code, or if applicable, a lessor-retailer licensed under this code, to
12 do any of the following:

13 (1) Remit license or registration fees received or contractually
14 obligated to be paid from a consumer to the department.

15 (2) Pay to the legal owner of a vehicle transferred as a trade-in
16 by a consumer to the dealer or lessor-retailer the amount necessary
17 to discharge the prior credit balance owed to the legal owner.

18 (3) Pay to the lessor registered in accordance with Section
19 4453.5 of a vehicle transferred as a trade-in by a consumer to the
20 dealer or lessor-retailer the amount the dealer or lessor-retailer
21 agreed to pay to the lessor.

22 (4) Pay the amount specified in a consignment agreement to a
23 consumer after the sale of a consigned vehicle.

24 (d) “Participant” means a dealer licensed under this code or a
25 lessor-retailer licensed under this code.

26 (e) “Recovery corporation” means the Consumer Motor Vehicle
27 Recovery Corporation.

28 (f) “Recovery fund” means the consumer recovery fund
29 established by the recovery corporation pursuant to Section 12203
30 for the payment of eligible claims.

31 12201. (a) Participants shall maintain a corporation under the
32 Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing
33 with Section 7110) of Division 2 of Title 1 of the Corporations
34 Code) that shall operate under the name “Consumer Motor Vehicle
35 Recovery Corporation.”

36 (b) The purpose of the Consumer Motor Vehicle Recovery
37 Corporation is to provide payments to consumers on eligible claims
38 subject to the requirements and limitations set forth in this chapter.

1 (c) A participant may not charge or collect from a consumer a
2 separate fee or charge to recoup the fee paid by the participant
3 pursuant to Section 4456.3.

4 (d) The State of California and its officers, agents, or employees
5 shall not be liable for ~~an~~ *any* act or omission of the recovery
6 corporation or its directors, officers, agents, or employees.

7 12202. (a) The recovery corporation shall have a board of
8 directors composed of six directors, as follows:

9 (1) One public consumer representative member appointed by
10 the Director of the Department of Consumer Affairs who shall
11 serve until the appointment is revoked, another appointment is
12 made, or until the director resigns. The consumer representative
13 shall be either of the following:

14 (A) A current or former prosecutor with at least two years of
15 direct experience in the civil or criminal enforcement of consumer
16 protection laws, including laws prohibiting deceptive advertising
17 and unlawful and fraudulent practices.

18 (B) A current or former employee of a government agency who
19 has at least two years of direct experience in one of the following:

20 (i) The investigation, mediation, and resolution of consumer
21 complaints.

22 (ii) Providing counseling, information, education, or referral
23 services to consumers.

24 (iii) Administering a consumer protection program that provides
25 any of the services described in clause (i) or (ii).

26 ~~(2) One employee of the Department of Justice, assigned by the~~
27 ~~office~~

28 (2) *A representative* of the Attorney General, who shall serve
29 as an ex officio, nonvoting member.

30 (3) One member of the general public appointed by the Senate
31 Committee on Rules to a two-year term.

32 (4) One member of the general public appointed by the Speaker
33 of the Assembly to a two-year term, except that the initial
34 appointment to the board of directors shall be for a one-year term.

35 (5) Two participants, who shall be appointed by the Governor
36 for two-year terms, except that the initial term of the position of
37 one of the participant directors shall be for a one-year term.

38 (b) A person is eligible to be nominated and to serve as a
39 participant director if the person satisfies all of the following
40 conditions:

1 (1) The person's primary occupation, at the time of nomination
2 and continuously during the previous three years, has been as an
3 owner or general manager of a licensed dealer or lessor-retailer.

4 (2) The person has not been convicted of a crime, including a
5 plea or verdict of guilty or a conviction following a plea of nolo
6 contendere.

7 (3) The person is not subject to a judgment or administrative
8 order, whether entered after adjudication or stipulation, predicated
9 on that person's commission of an act of dishonesty, fraud, deceit,
10 or violation of this chapter or Chapter 5 (commencing with Section
11 17200) of Part 2 of Division 7 of the Business and Professions
12 Code.

13 (4) The person is not a defendant in a pending criminal or civil
14 law enforcement action brought by a public prosecutor.

15 (5) The person has not served as a participant director of the
16 recovery corporation at any time during the previous 18 months.

17 (c) A director who does not qualify to be a participant director,
18 whose term has lapsed, or who otherwise becomes unable to serve
19 shall not continue to serve as a director.

20 12203. (a) The recovery corporation shall establish a consumer
21 recovery fund for the payment of claims as provided in this chapter.
22 The recovery corporation shall receive funds from the department
23 as provided in Section 4456.3 and shall promptly notify the
24 department when the recovery fund balance reaches the amounts
25 specified in subdivision (b) of Section 4456.3.

26 (b) The recovery corporation shall establish and maintain an
27 operations account within the recovery fund for the payment of
28 costs of operations and administration. The recovery corporation
29 shall prepare, prior to its fiscal year end, an estimated annual
30 operational budget projecting the costs of operations and
31 administration for the succeeding fiscal year, excluding the amount
32 paid for claims. The recovery corporation shall not expend more
33 than two hundred fifty thousand dollars (\$250,000) each fiscal
34 year from the operations account for the administration of this
35 chapter.

36 (c) The recovery corporation shall invest all funds received from
37 the department pursuant to Section 4456.3, and interest earned on
38 those funds, deposited in the recovery fund, in a federally insured
39 account or in federally insured certificates of deposit at a California
40 state or federally chartered bank or savings bank.

1 (d) The recovery corporation holds all money in the recovery
2 fund in trust for the purposes provided in this chapter and shall
3 disburse funds only as provided in this chapter.

4 (e) The recovery corporation shall separately account for
5 disbursements and collections. The accounting shall include a
6 record of each claim paid that indicates the name, address, and
7 phone number of each claimant receiving payment, the amount of
8 the payment, and the name of the participant for which a claim
9 was paid. Quarterly reports shall be provided to the office of the
10 Attorney General, Consumer Law Section.

11 (f) The recovery corporation may adopt reasonable written
12 bylaws, rules, and procedures to carry out the purposes of this
13 chapter. The representative-of-office of the Attorney General may
14 vote on the adoption of bylaws, rules, and procedures
15 notwithstanding paragraph (2) of subdivision (a) of Section 12202.

16 12204. (a) A consumer may file an application with the
17 recovery corporation for the payment of the consumer's eligible
18 claim if a dealer or lessor-retailer against whom the claim is
19 asserted has ceased selling and leasing motor vehicles to the general
20 public or has become subject to a petition in bankruptcy.

21 (b) (1) The application shall be verified and shall set forth all
22 of the following information:

23 (A) The consumer's name, address, and telephone number.

24 (B) The amount of the eligible claim.

25 (C) A description of the circumstances demonstrating an eligible
26 claim.

27 (D) A statement indicating the consumer's belief that the dealer
28 or lessor-retailer has ceased selling and leasing motor vehicles to
29 the general public or has become subject to a petition in bankruptcy
30 and the reasons for this belief.

31 (E) A statement indicating what action, if any, the applicant has
32 taken to recover the amount of the eligible claim.

33 (2) Nothing in this chapter shall be construed to require a
34 consumer to bring a civil action to obtain recovery, file a
35 bankruptcy claim, or file a crime report with a law enforcement
36 agency in order to obtain payment of an eligible claim submitted
37 to the recovery corporation.

38 (c) The application shall be accompanied by a copy of the
39 agreement between the consumer and the dealer or lessor-retailer,

1 unless the agreement is unnecessary to the recovery corporation's
2 determination of the validity of the claim.

3 (d) If the eligible claim is based on the failure to remit license
4 or registration fees, the application shall be accompanied by
5 evidence demonstrating that the consumer paid money or other
6 consideration for the fees, or became obligated to pay the fees,
7 and that the fees had not been remitted. The eligible claim shall
8 be limited to the dollar amount of the license or registration fees
9 not remitted and a late charge or penalty.

10 (e) If the eligible claim is based on the failure to pay the
11 proceeds of a consignment sale, the application shall be
12 accompanied by the consignment agreement, evidence that the
13 consigned vehicle was sold, and by the consumer's verified
14 statement that the consumer did not receive the portion of the
15 proceeds of the sale to which the consumer was entitled. The
16 eligible claim is limited to the dollar amount specified in a written
17 consignment agreement to be paid to the consignor.

18 (f) If the eligible claim is based on the failure to pay the legal
19 owner of the consumer's trade-in vehicle, the application shall be
20 accompanied by a statement from the legal owner of the amount,
21 if any, that he or she received from the dealer or lessor-retailer.
22 The eligible claim is limited to the dollar amount necessary to
23 discharge the credit balance owing on the trade-in vehicle.

24 (g) If the eligible claim is based on the failure to pay the lessor
25 of the consumer's trade-in vehicle, the application shall be
26 accompanied by a statement from the lessor of the amount, if any,
27 that the lessor received from the dealer or lessor-retailer. The
28 eligible claim is limited to the dollar amount necessary to pay the
29 lessor the total amount that the dealer or lessor-retailer agreed with
30 the consumer to pay the lessor.

31 (h) The recovery corporation may require reasonable additional
32 information designed to facilitate payment of eligible claims.

33 (i) (1) For claims that have accrued on or after July 1, 2008,
34 and before January 1, 2009, the application shall be filed within
35 18 months of the date upon which the dealer or lessor-retailer
36 ceased selling or leasing motor vehicles to the general public or
37 became subject to a petition in bankruptcy.

38 (2) For claims that have accrued on or after January 1, 2009,
39 the application shall be filed within one year of the date upon which

1 the dealer or lessor-retailer ceased selling or leasing motor vehicles
2 to the general public or became subject to a petition in bankruptcy.

3 12205. The recovery corporation shall develop a notice fully
4 explaining a consumer's right to make a claim from the fund, an
5 application form, and an explanation of how to complete the
6 application. The notice, application, and explanation shall be in
7 English and Spanish and shall be provided to a person upon request.

8 12206. (a) Within 30 days of receiving an application, the
9 recovery corporation shall notify the applicant, in writing, that the
10 application is complete or, if the application is incomplete, what
11 additional information is required.

12 (b) (1) Within 60 days of the recovery corporation providing
13 notice to the applicant of a complete application, the recovery
14 corporation shall either pay the eligible claim from the fund as
15 prescribed in this chapter or deny the claim. A claim shall be
16 deemed granted unless the directors affirmatively vote to deny the
17 claim.

18 (2) The recovery corporation, for good cause, may extend the
19 60-day period not more than an additional 90 days to investigate
20 the accuracy of the application or evidence submitted by a dealer
21 or lessor-retailer.

22 (c) A director shall not be involved in the decision of a claim
23 if the director has a financial interest in the outcome of the decision;
24 has a financial interest in or is employed by the participant that is
25 the subject of the claim; or has a familial or close personal
26 relationship with the claimant or an owner, officer, director, or
27 manager of the participant.

28 12207. (a) Within 15 days of receiving a complete application,
29 the recovery corporation shall serve a copy of the complete
30 application and the following notice on the dealer or lessor-retailer
31 that is the subject of the claim:

32 "NOTICE"

33
34 "The attached application has been made to the Consumer Motor
35 Vehicle Recovery Corporation for payment of a claim allegedly
36 arising out of your conduct or omission. If you wish to contest
37 payment, you must file a written response to the application that
38 describes any evidence that you have showing that the application
39 is inaccurate or that payment from the fund is not authorized under
40

1 Section 12200 and following of the Vehicle Code, a copy of which
2 is provided.

3 “The allegations stated in the attached application may constitute
4 grounds on which disciplinary action may be taken to suspend or
5 revoke your license. In addition, the Department of Motor Vehicles
6 may suspend your license until you have repaid in full the amount
7 paid by the Consumer Motor Vehicle Recovery Corporation on
8 the attached application, plus interest at the rate of 10 percent per
9 annum.”

10

11 (b) The notice prescribed by subdivision (a), a copy of the
12 application for payment, and a copy of this chapter shall be served
13 on the dealer or lessor-retailer by personal service or certified mail,
14 return receipt requested, at the department’s mailing address of
15 record for that licensee.

16 12208. If the recovery corporation pays the claim, the amount
17 of the payment shall be the total of the amount of the eligible claim,
18 but in no event may the payment exceed thirty-five thousand dollars
19 (\$35,000) for a transaction.

20 12209. If the recovery corporation denies the claim, the
21 recovery corporation shall notify the applicant in writing of the
22 denial, the legal and factual bases for the denial, and the applicant’s
23 right to contest the denial in writing within 60 days or any longer
24 period permitted by the recovery corporation. If the applicant does
25 not contest the denial within 60 days or an additional period
26 reasonably requested by the consumer, the decision shall be final.
27 The recovery corporation shall act on the applicant’s objection
28 within 30 days. If the claim is denied in whole or in part, the
29 applicant may seek review in the superior court of any of the
30 following counties in which the office of the Attorney General
31 maintains an office: Sacramento, San Francisco, Los Angeles, or
32 San Diego. Review shall be limited to the written record before
33 the recovery corporation and any relevant evidence that could not
34 have been previously presented to the recovery corporation despite
35 the applicant’s reasonable diligence. The superior court shall affirm
36 the decision of the recovery corporation if it is supported by
37 substantial evidence.

38 ~~12110.~~

39 12210. After the recovery corporation pays or rejects a claim,
40 all of the following apply:

1 (a) Immediately upon payment, the recovery corporation shall
2 be subrogated to all of the consumer's rights against the dealer or
3 lessor-retailer to the extent of the amount of the payment. The
4 recovery corporation shall seek to recover the claim amount from
5 the dealer's bond required by Section 11710.

6 (b) The recovery corporation may bring an action to recover
7 the amount of the payment plus interest at the rate of 10 percent
8 per annum and shall be entitled to recover costs and reasonable
9 attorney's fees.

10 (c) Within 10 days of paying the claim, the recovery corporation
11 shall inform the department of the payment of the claim, the
12 amount of the payment, and the name and address of the dealer or
13 lessor-retailer that is the subject of the claim. Upon the
14 department's request, the recovery corporation shall provide the
15 department with a copy of the claim application and other
16 documents received by the recovery corporation in connection
17 with the claim.

18 (d) Within 15 days of paying or rejecting the claim, the recovery
19 corporation shall serve the dealer or lessor-retailer that is the
20 subject of the claim with notice of the recovery corporation's
21 disposition of the claim in the manner provided for service in
22 subdivision (b) of Section 12207.

23 12211. If the recovery corporation has insufficient funds to
24 pay all eligible claims, the recovery corporation shall pay eligible
25 claims in the order that the claim applications were received and
26 shall hold the remaining claims until funds are available to pay
27 those claims.

28 12212. (a) Within 30 days after the close of the fiscal year or
29 other reasonable period established by the board of directors, the
30 recovery corporation shall make publicly available a statement of
31 the following information concerning the most recently concluded
32 fiscal year:

33 (1) The number of claims and approximate dollar amount of
34 the claims received.

35 (2) The total number of claims and total dollar amount of claims
36 paid.

37 (3) The approximate number and dollar amount of claims denied
38 or abandoned.

39 (4) The dollar balance in the recovery fund.

1 (5) The dollar amount of fees received pursuant to Section
2 4456.3.

3 (6) The administrative costs and expenses of the recovery
4 corporation.

5 (b) The recovery corporation shall make publicly available
6 within 15 days of approval by the board of directors or other
7 reasonable period established by the board of directors, the
8 following information:

9 (1) The approved minutes of meetings of the board of directors.

10 (2) The approved estimated annual operational budget projecting
11 the costs of operations and administration for the succeeding fiscal
12 year, excluding the amount to be paid for claims.

13 (3) The approved bylaws, as amended, of the recovery
14 corporation.

15 (c) Information may be made publicly available as required by
16 this section by disseminating the information on an Internet Web
17 site or providing the information by electronic mail to a person
18 who has requested the information and provided a valid electronic
19 mail address.

20 12213. The operation of the recovery corporation shall at all
21 times be subject to the examination and review of the Attorney
22 General and the Attorney General's representatives. The Attorney
23 General and his or her representatives may at any time investigate
24 the affairs and examine the books, accounts, records, and files used
25 by the recovery corporation. The Attorney General and his or her
26 representatives shall have free access to the offices, books,
27 accounts, papers, records, files, safes, and vaults of the recovery
28 corporation and may copy any documents of, or in the possession
29 of, the recovery corporation.

30 12214. The Attorney General or his or her representative may
31 determine that the recovery corporation has failed or ceased to
32 operate upon a finding that any one of the following has occurred
33 with respect to the recovery corporation:

34 (a) The recovery corporation was not created.

35 (b) The recovery corporation is dissolved.

36 (c) The recovery corporation ceased to operate.

37 (d) The recovery corporation is insolvent or bankrupt.

38 (e) The recovery corporation failed to pay its operating costs.

39 (f) The recovery corporation failed to pay any claim or judgment
40 in a timely manner.

1 (g) The recovery corporation violated its articles of incorporation
2 or any law of this state.

3 (h) The recovery corporation invested its funds in violation of
4 this chapter.

5 ~~(i) The recovery corporation has not levied assessments as~~
6 ~~required by this chapter.~~

7 ~~(j)~~

8 (i) The recovery corporation has not diligently made a decision
9 upon a claim made by a person aggrieved.

10 ~~(k)~~

11 (j) The recovery corporation violated any section of this chapter.

12 ~~(l)~~

13 (k) The recovery corporation neglected or refused to submit its
14 books, papers, and affairs to the inspection of the Attorney General
15 or his or her representatives.

16 12215. If the recovery corporation is dissolved or ceases to
17 exist, or if the Attorney General or his or her representative makes
18 a determination, pursuant to Section 12214, that the recovery
19 corporation has failed or ceased to operate, all outstanding debts,
20 obligations of the recovery corporation, and amounts due for
21 services rendered shall first be paid from the remaining assets,
22 including the recovery fund. The assets remaining, after settling
23 those liabilities, shall be distributed to the participants, less the
24 costs of that distribution.

25 12216. All costs and expenses incurred by the Department of
26 Justice in the administration of this chapter shall be paid to the
27 Department of Justice by the recovery corporation. The Department
28 of Justice may institute an action for the recovery of costs and
29 expenses incurred in the administration of this article in any court
30 of competent jurisdiction.

31 12217. Nothing in this chapter is intended to limit or restrict
32 actions, remedies, penalties, or procedures otherwise available
33 pursuant to any other provision of law.

34 SEC. 6. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O